

**Re: Fw: General ATP question**

Barbara Fowler to: John Phillips

02/25/2011 03:53 PM

Cc: JohnC Anderson, Lawrence Hayob, Michael McCullough

John,

EPA does not want to be held liable / responsible; therefore, EPA must be extremely cautious in answering this question. There are potentially significant corporate tax consequences (contingent on a multitude of various factors) in determining the value of stock for a privately held corporation (possibly more difficult to determine after incorporation / continuing as a going concern) and a multitude of other factors that should be taken into consideration.

Ensuring Jennifer understands the complexity in determining the value of stock, EPA then needs to decide if we can offer broad ideas (I hesitate to say guidance) and or website references (I think this maybe extremely helpful but possibly increase our liability - we'll let the attorneys determine if this is ok or not).

So, the IRS states at the following website http://www.irs.gov/irb/2006-03_IRB/ar12.html

"...• **B. Application of the Good Faith Standards of § 1.422-2(e)(2)**

Section 1.422-2(e)(1) generally provides that except as provided by § 1.422-2(e)(2), the option price of an incentive stock option must not be less than the fair market value of the stock subject to the option at the time the option is granted. Section 1.422-2(e)(2) generally provides that if a share of stock is transferred to an individual pursuant to the exercise of an option which fails to qualify as an incentive stock option merely because there was a failure of an attempt, made in good faith, to meet the option price requirements of § 1.422-2(e)(1), those option price requirements are considered to have been met. Whether there was a good-faith attempt to set the option price at not less than the fair market value of the stock subject to the option at the time the option was granted depends on the relevant facts and circumstances.

Until further guidance is issued, with respect to a stock right issued before January 1, 2005, for purposes of determining whether the stock option results in a deferral of compensation pursuant to Notice 2005-1, Q&A-4(d)(ii), or the stock appreciation right results in a deferral of compensation pursuant to § 1.409A-1(b)(5)(i)(B) of the proposed regulations, principles similar to those set forth in § 1.422-2(e)(2) will be applied. Accordingly, where there was a good-faith attempt to set the exercise price of a stock right granted before January 1, 2005, at a price not less than the fair market value of the stock subject to the stock right at the time the stock right was granted, then such exercise price will be treated as being not less than the fair market value of the stock at the time of grant for purposes of determining whether the stock right is excluded from the requirements applicable to deferred compensation under section 409A.

III. Stock Rights Issued on or after January 1, 2005 and Continued

Application of Notice 2005-1, Q&A-4(d)(ii) With respect to stock options granted on or after January 1, 2005 and before the effective date of final regulations, Notice 2005-1, Q&A-4(d)(ii) remains applicable guidance. Taxpayers may also rely on § 1.409A-1(b)(5)(i)(B) of the proposed regulations during this period. With respect to stock appreciation rights issued on or after January 1, 2005 and before the effective date of final regulations, taxpayers may rely on §

1.409A-1(b)(5)(i)(B) of the proposed regulations. In applying the provisions of the proposed regulations relating to stock appreciation rights, and specifically § 1.409A-1(b)(5)(i)(B)(1) and (2), taxpayers may apply the rule set forth in Notice 2005-1, Q&A-4(d)(ii) that, for purposes of determining the fair market value of the stock at the date of grant, any reasonable valuation method may be used. Accordingly, where a taxpayer can demonstrate that the exercise price of a stock right, granted on or after January 1, 2005, and before the effective date of final regulations, is intended to be not less than the fair market value of the stock at the date of grant and that the value of such stock was determined using a reasonable valuation method, then that valuation will meet the requirements of Notice 2005-1, Q&A-4(d)(ii) regardless of whether that determination satisfies the valuation requirements in § 1.409A-1(b)(5)(i)(B) of the proposed regulations...."

I was looking for better reference but the one above suffices.

So stock should be valued at "...fair market value...using a reasonable valuation method...", this is a determination (preferably by an independent appraiser) of value the corporation's owner(s) agree on. Keep it simple, identify the number of shares, the number of owners, the division of share ownership, initial and individual investments, cash flow, profit, and performance measures are some potential areas of consideration in valuation of stock.

Hope this helps, if not we'll work on it more Monday.

Have a great EPA day!

Thank You,
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John Phillips

Here's a new one for us. -----Original Message--...

02/25/2011 11:34:38 AM

From: John Phillips/R7/USEPA/US@EPA
To: Barbara Fowler/R7/USEPA/US@EPA, JohnC Anderson/R7/USEPA/US@EPA, Michael McCullough/R7/USEPA/US@EPA, Lawrence Hayob/R7/USEPA/US@EPA
Date: 02/25/2011 11:34 AM
Subject: Fw: General ATP question

Here's a new one for us.

-----Original Message-----

From: Trotter.Jennifer@epamail.epa.gov
To: Phillips.John@epamail.epa.gov
Subject: General ATP question
Sent: Feb 25, 2011 10:16 AM

Hi John,

I have a RCRA respondent (Industrial Fabrication) who'll be turning in an ATP and they have a general question I was hoping you could answer for me. According to the respondent, the business is a privately owned corporation and they are wanting to know how they can determine the value of their stocks. I've attached the Iowa sec of state info via the link below. I appreciate your assistance.

[http://www.sos.state.ia.us/Search/corp/\(S\(cnhr2v45luna4g55ho5pht45\)\)/corp_summary.aspx](http://www.sos.state.ia.us/Search/corp/(S(cnhr2v45luna4g55ho5pht45))/corp_summary.aspx)

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